

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM E. DUNCAN,

Plaintiff,

v.

JOSEPH LEHMAN,

Defendant.

Case No. C04-5633 RBL

ORDER ADOPTING REPORT AND
RECOMMENDATION

The Court, having reviewed the Report and Recommendation of Magistrate Judge J. Kelley Arnold, objections to the Report and Recommendation, if any, and the remaining record, does hereby find and ORDER:

- (1) The Court adopts the Report and Recommendation;
- (2) Defendant's Motion to Dismiss is **DENIED**. The doctrine of favorable termination does not apply where plaintiff is not able to file an action in habeas challenging a former conviction.
- (3) This matter is re-referred to Magistrate Judge J. Kelley Arnold for further proceedings consistent with this Order.
- (4) The Clerk is directed to send copies of this Order to plaintiff, counsel for defendants and to the Hon. J. Kelley Arnold.

Dated this 12th day of July, 2005.


RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE